

REMARKS

The Specification has been amended to use the proper format for the registered trademark ROUNDUP and to provide clarity. Applicant has amended paragraphs [0127] and [0150] of the Specification to correct typographical errors. The Specification has been amended to include the ATCC Accession number. A copy of the ATCC deposit receipt is attached. Applicant has amended claims 1-2, 5-7, and 20. Claims 9-19 and 21-22 have been canceled. Claims 23-35 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§112, 102(b) and 103(a) rejections as set forth in the Office Action dated December 2, 2005. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 9-22 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claim 20 and canceled claims 9-19 and 21-22. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-22 under §112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 1, 2, and 7 to include the ATCC Accession number. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit was performed; and

- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1, 2, 6, 7, 12, 14, 16, 18, 19, and 21 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has rejected claims 1, 2, 7, 12, 14, and 16 as being indefinite in the recitation of "ATCC Accession No. _____", because the ATCC Accession number is missing. Applicant has amended claims 1, 2, and 7 to include the ATCC Accession number and has canceled claims 12, 14, and 16. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1, 2, 7, 12, 14, and 16 under 35 U.S.C. §112, second paragraph, as being indefinite in that the recitation of "0491735" does not clearly identify the claimed soybean cultivar and seed, and does not set forth the metes and bounds of the claimed invention. Applicant has amended claims 1, 2, and 7 to state the ATCC Accession number and has canceled claims 12, 14, and 16. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 6 under 35 U.S.C. §112, second paragraph, as being indefinite in that the members of the Markush group are not tissue types, but rather are cell types or organ types. Applicant has amended claim 6. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 7 under 35 U.S.C. §112, second paragraph, as being indefinite in that the recitation of "capable of expressing" is not clear. Applicant has amended claim 7. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14, and 16 under 35 U.S.C. §112, second paragraph, as being indefinite in that the phrase "under plant growth conditions" has not been defined. Applicant has canceled claims 12, 14, and 16. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 14 under 35 U.S.C. §112, second paragraph, as being indefinite in that a plant variety would not be crossed with itself but with a different

plant variety. Applicant has canceled claim 14. Withdrawal of this rejection is respectfully requested.

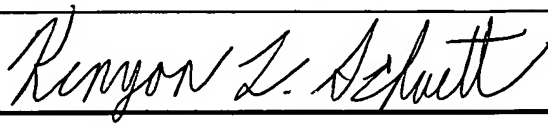
The Examiner has rejected claims 18 and 21 under 35 U.S.C. §112, second paragraph, as being indefinite in that the recitation of "wherein said transgene is selected from the group consisting of: herbicide resistance, insect resistance, and disease resistance", as herbicide resistance, insect resistance, and disease resistance are not transgenes. Applicant has canceled claims 18 and 21. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 9-22 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Holmes B.A. (U.S. Patent No. 5,866,771, filed March 12, 1998 and issued February 2, 1999). Applicant has amended claim 20 and canceled claims 9-19 and 21-22. Applicant submits there are numerous differences between soybean cultivar 0491735 of the instant invention and soybean cultivar 943188628018 of U.S. Patent No. 5,866,771. Soybean cultivar 0491735 has a brown hilum, while soybean cultivar 943188628018 has a black hilum. In addition, soybean cultivar 0491735 has a tan pod color, while soybean cultivar 01022430 has a brown pod color. Therefore, soybean cultivar 0491735 of the instant invention is novel and nonobvious over soybean cultivar 943188628018 of U.S. Patent No 5,866,771. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§112, 102(b), and 103(a). Reconsideration of this application and an early notice of allowance are respectfully requested.

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Amendment dated February 28, 2006
Reply to Office Action dated December 2, 2005

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